Proposed Directive on Strategic Lawsuits Against Public Participation

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On 27 April 2022, the European Commission published a new proposal for a Directive on protecting persons who engage in public participation from manifestly unfounded or abusive court proceedings ("Strategic lawsuits against public participation", or "SLAPPs"). The proposal establishes tools for all persons engaged in issues of public interest to fight back against abusive court proceedings. It follows a public consultation (launched by the European Commission between October 2021 and January 2022) and an own-initiative report adopted by the European Parliament on 11 November 2021.

The proposed Directive would apply to civil court cases with cross-border dimensions and is complemented by a Recommendation inviting member states to extend the proposed rules to domestic cases, beyond civil matters. The safeguards would benefit journalists and people/organisations engaged in defending rights and reporting on valuable issues, against whom strategic lawsuits are brought, interfering with public debate in the European Union.

The proposal starts with a definition of a SLAPP in Article 3(3), as being a "court proceeding brought in relation to public participation that is fully or partially unfounded and has as its main purpose to prevent, restrict or penalize public participation" and develops common criteria that could demonstrate the existence of such a purpose.

Following the definition, four types of safeguards are divided into different chapters: Chapter II on procedural safeguards; Chapter III on early dismissal; Chapter IV on remedies against abusive court proceedings; and Chapter V on protection against third-country judgments.

First, the proposal ensures the possibility of dismissing unfounded proceedings and sets out that it should be left to "courts and tribunals to adopt an early decision to dismiss, in full or in part, court proceedings against public participation as manifestly unfounded". A claimant "who has brought abusive court proceedings against public participation can be ordered to bear all the costs of the proceedings", whereas the defender (i.e., the person targeted by the SLAPP) "who has suffered from harm as a result of an abusive court proceedings against public participation is able to claim and to obtain full compensation for that

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harm." Most importantly, the proposed text calls for dissuasive, effective and proportionate penalties to be ordered by courts or tribunals seized of abusive court proceedings. Finally, a third-country-judgment against a person domiciled in the European Union should be refused by member states when it "would have been considered manifestly unfounded or abusive if it had been brought before the courts or tribunals of the member state where recognition or enforcement is sought and those courts or tribunals would have applied their own law."

The Recommendation is a bit more specific as to the protection of media freedom and pluralism and calls on member states to ensure the "existence of an open, free and plural media environment". Furthermore, member states should encourage awareness raising campaigns and training aimed at strengthening journalists' and media professionals' capacity to detect SLAPPs.

While the Recommendation is directly applicable, the proposed Directive will be negotiated and adopted by the Council and the European Parliament.

European Commission, Proposal for a Directive on protecting persons who engage in public participation from manifestly unfounded or abusive court proceedings ("Strategic lawsuits against public participation"), COM(2022) 177 final

https://ec.europa.eu/info/sites/default/files/4_1_188784_prop_dir_slapp_en_0.pdf

European Commission, Recommendation on protecting journalists and human rights defenders who engage in public participation from manifestly unfounded or abusive court proceedings ("Strategic lawsuits against public participation"), COM(2022) 2428 final

https://ec.europa.eu/info/sites/default/files/1_1_188781_recc_slapp_en_1.pdf

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